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6 **UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF OREGON**

DENISE and KENNETH COOK,

Plaintiffs,

v.

**BENEFICIAL OREGON INC., a Delaware
Corporation;**

**SHAPIRO & SUTHERLAND, LLC, a
Washington State LLC;**

Defendants.

Case No. 10-CV-3121-PA

**PLAINTIFFS VERIFIED REPLY IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

8 COMES NOW, plaintiffs Denise and Kenneth Cook, and hereby submits this Reply to
9 defendants Opposition to our Motion for Summary Judgment (dkts #53, 54, 56, 57).

10 **I. INTRODUCTION**

11 Plaintiffs primary contention remains that defendants were not holder in due course of the
12 security instrument (promissory note) in July, 2010 (at which time defendants started a foreclosure
13 process) for the property commonly known as 300 Newt Gulch Rd., Wilderville OR (NG Property).
14 "ORS 71.2010(20)(a)(B) defines a "holder" with respect to a negotiable instrument as "the person in
15 possession of the negotiable instrument"" (Westerberg v. Mader, 48 P. 3d 192 (2002) Or Court of
16 Appeals). "The mortgage [deed] can have no separate existence. When the note is paid the mortgage
17 expires." "The note and mortgage are inseparable; the former as essential, the later as an incident. An

18 assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity.”
 19 Carpenter v Longan 83 U.S. 271 (1872).

20 II. ARGUMENT

21 AMPLE OPPORTUNITY TO PRODUCE PROMISSORY NOTE

22 1. Defendant's have had over 5 months since plaintiffs filed their original suit to produce
 23 the original promissory note yet have failed to do so.

24 2. This court stated during the hearing of March 2, 2011 “...I am going to want to see the
 25 original note. So get it and make it available.” (dkt #44, transcript). Defendants have yet to comport
 26 themselves with this request.

27 3. Defendant Beneficial has also failed to comply with this court's order of March 2, 2011
 28 (dkt #22, pg 2):

29 “Within 10 days, defendant shall submit a chain of title for the
 30 Promissory Note and Deed of Trust at issue. This chain of title should
 31 include all transfers/assignments/etc of any interest, including the
 32 beneficial interest, in the note and the deed. Defendant shall also submit
 33 information regarding the present location of the original note. Defendant
 34 shall obtain possession of the original note and produce it upon the courts
 35 request.”

36 In fact, defendant Beneficial stated on April 13, 2011 “**The physical location of the original**
 37 **promissory note is not relevant**” (dkt #54, pg 2 of 4, § 2 & 3) !!!

38 DEFENDANTS PATTERN OF MISCONDUCT?

39 4. As stated by defendant Beneficial: “Beneficial Oregon Inc. is a wholly owned
 40 subsidiary of HSBC Finance Corporation which is an indirectly wholly owned subsidiary of HSBC
 41 Holdings plc, a United Kingdom corporation.” (dkt 36, pgs 1-2 of 3, § 2).

42 5. The Financial Crisis Inquiry Report of January 26, 2011 (due to voluminous size- 662
 43 pages-we only provide the GPO link/URL: <http://www.gpoaccess.gov/fcic/fcic.pdf>) specifically
 44 discusses “HSBC” at least 13 times.

6. HSBC Finance Corporation's own "Form 10-K" SEC filing for fiscal year ended

December 31, 2010 (due to voluminous size-nearly 300 pages-we only provide the SEC link/URL:

<http://www.sec.gov/Archives/edgar/data/354964/000095012311019123/c62397e10vk.htm>) states (pg

11, ¶ 3): "State and federal officials are investigating the procedures followed by mortgage servicing

companies and banks, including HSBC Finance Corporation and certain of our affiliates, relating to

foreclosures." "Following the examination, the Federal Reserve issued a supervisory letter to HSBC

Finance Corporation and HSBC North America noting certain deficiencies in the processing,

preparation and signing of affidavits and other documents supporting foreclosures and in governance

of and resources devoted to our foreclosure processes, including the evaluation and monitoring of third

party law firms retained to effect our foreclosures." **"We have suspended foreclosures until such**

time as we have substantially addressed the noted deficiencies in our processes. We are also

reviewing foreclosures where judgment has not yet been entered and will correct deficient

documentation and re-file affidavits where necessary." Also, "As a result of industry-wide compliance

issues, certain courts have issued new rules relating to foreclosures and **we anticipate that scrutiny of**

foreclosure documentation will increase. Also, in some areas, officials are requiring additional

verification of information filed prior to the foreclosure proceeding." (pg 27, ¶ 4).

7. On April 13, 2011, the Board of Governors of the Federal Reserve issued a Consent

Decree order against HSBC Finance Corporation and its direct and indirect subsidiaries (Offer of

Proof: Exhibit 24 True Copy of HSBC Consent Order). Among numerous other issues, the decree

stated (pgs 2-3, § a-c,e):

"(a) [HSBC] Filed or caused to be filed in state courts and in connection with bankruptcy proceedings in federal courts numerous affidavits executed by employees of the Mortgage Servicing Companies or employees of third-party providers making various assertions, such as the ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, **when, in many cases, they were not based on such knowledge or review;**"

74 “(b) **Filed or caused to be filed** in courts in various states and in connection with
 75 bankruptcy proceedings in federal courts or in the local land record offices, **numerous**
 76 **affidavits and other mortgage-related documents that were not properly notarized,**
 77 **including those not signed or affirmed in the presence of a notary;”**

78
 79 “(c) Litigated foreclosure and bankruptcy proceedings and **initiated non-judicial**
 80 **foreclosures without always confirming that documentation of ownership was in order**
 81 **at the appropriate time, including confirming that the promissory note and mortgage**
 82 **document were properly endorsed or assigned and, if necessary, in the possession of**
 83 **the appropriate party;”**

84 “(e) **Failed to have adequate internal controls, policies and procedures, compliance**
 85 **risk management, internal audit, training, and board oversight of the foreclosure process,**
 86 **including sufficient oversight of outside counsel and other third-party providers**
 87 **handling foreclosure-related services** with respect to the Servicing Portfolio.”

88 Also, HSBC and its subsidiaries were ordered to “ensure that the Mortgage Servicing Companies
 89 have the ability to **locate and secure all documents, including original promissory notes,**” (pg
 90 20, § (c)). In addition, “processes to ensure that the Mortgage Servicing Companies have
 91 **properly documented ownership of the promissory note** and mortgage (or deed of trust) under
 92 applicable state law, or are otherwise a proper party to the action (as a result of agency or other
 93 similar status) at all stages of foreclosure and bankruptcy litigation;” (pg 21, § (iii)).

94 8. Defendant Shapiro & Sutherland claims of a “postponement of sale” (Dec 17th, 2010)
 95 and “public sale” on January 5, 2011 have already been shown to be false in dkt #42, pg 2 § 7.

96 9. Forgery has been alleged within the “Shapiro Attorneys Network” by a former
 97 employee as detailed in dkt #42, pg 2 § 3-6.

98 10. Lender Processing Services (LPS) allegedly was used as an agent during the defendants
 99 foreclosure process (defendants dkt #34-4, pgs 1-2) and made claims as to performing public
 100 “postponement sale notices”. When we the plaintiffs challenged the Dec. 17, 2010 appearance (dkt
 101 #42, pg 2 of 6 § 7), defendant Shapiro & Sutherland substituted an affidavit (not verified) by a
 102 “Richard Magatelli of Nationwide Process Service, Inc.” (dkt # 47-1) as to performing the
 103 “postponement of trustee's sale”. Closer examination of dkt #47-1 shows conflicting dates. The “fax
 104 header” at the top of pg 1 lists a date of “Dec. 16, 2010” **which is the day BEFORE the claimed day**
 105 **of “notice of postponement sale”** listed further below (twice) in the same document!!!!

11. LPS was also issued a Consent Decree Order

(<http://www.federalreserve.gov/newsevents/press/enforcement/enf20110413a11.pdf>) by the Federal Reserve System similar to that detailed in § 7 above regarding “HSBC Consent Decree”.

12. “HSBC Bank” was sanctioned by Circuit Court Judge Jennifer Bailey of the Eleventh Judicial Circuit in Miami-Dade County Florida (HSBC v. Orlando Eslava 2008-CA-055313) . Judge Bailey stated: “The basis for this sanction is the **contemptuous noncompliance with the Court’s order...**” Further, Judge Bailey ordered “**dismiss with prejudice**” the banks [HSBC] case, and the note canceled and “title shall be conveyed back to Mr. Eslava by the bank” (Offer of Proof: Exhibit 25, Transcript of Eslava case, May 6, 2010-pg 5-6). “If this is how a bank is going to conduct its business, then the bank should be bearing the sanctions.” (Exhibit 25, pg 7).

13. Plaintiffs deny that defendant Beneficial met LR 7-1(a) as they claim which was specified previously in dkt #39, pg 2 of 5, § 3.

III. CONCLUSION

14. Since defendants have not produced the original promissory note-even as ordered by this court; defendants have submitted into the record numerous conflicting and disputed “facts”; in addition to numerous US Government (Federal Reserve Consent Decree *et al.*) and other documents identifying numerous problems specifically with the named defendants and some of their agents, Plaintiffs Motion for Summary Judgment should be granted with prejudice.

124 Dated this 26 day of April, 2011.

125 Denise Cook
126 Denise Cook.

Kenneth Cook
Kenneth Cook.

127 STATE OF OREGON
128 COUNTY OF JOSEPHINE

129 BEFORE ME personally appeared Denise Cook and Kenneth Cook, being by me first duly sworn
130 and identified in accordance with Oregon law, deposes and says:

131 1. Our names are Denise Cook and Kenneth Cook, plaintiffs herein.

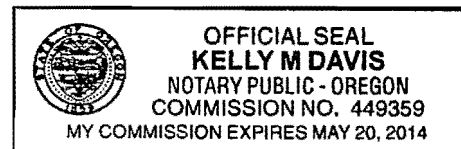
132 2. We hereby declare under penalty of perjury that we have read and understood the document
133 above and filed herein, and each fact alleged therein is true and correct of my own personal
134 knowledge.

135 Denise Cook
136 Denise Cook, Affiant

Kenneth Cook
Kenneth Cook, Affiant

137 SWORN TO and subscribed before me this 26th day of April, 2011.

Kelly M. Davis
Notary Public
My Commission expires:
May 20, 2014



CERTIFICATE OF SERVICE

UNDER PENALTY OF PERJURY, I CERTIFY that a copy of:

PLAINTIFFS VERIFIED REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

was provided by U.S. Mail on this 26 day of April, 2011 to:

Bishop, White, Marshall & Weibel
720 Olive Way - Suite 1201
Seattle WA 98101-1803

Shapiro & Sutherland
5501 NE 109th Court, Suite N
Vancouver WA 98662

Denise Cook

Denise Cook, *pro se*
300 Newt Gulch Rd.
Wilderville, OR 97543
541-761-0165

STATE OF OREGON, COUNTY OF JOSEPHINE

BEFORE ME personally appeared Denise Cook who, being by me first duly sworn and identified in accordance with Oregon law, did execute the foregoing in my presence this 26th day of April, 2011.

Kelly M. Davis
Notary Public

My Commission expires:

May 20, 2014

